STATE CONSTITUTIONAL LAW—SEARCH AND SEIZURE—VERMONT'S LIMITING OF THE EMERGENCY AID EXCEPTION AND RESPONSE TO *BRIGHAM CITY V. STUART*. *STATE V. FORD*, 998 A.2D 684 (VT. 2010).

*Nicole Gentile**

I. INTRODUCTION

In its 2010 *State v. Ford*[1] decision, the Supreme Court of Vermont significantly limited the scope of the state's emergency aid exception and, as a result, expanded the protected curtilage[2] surrounding the homes of all Vermonters. In *Ford*, the court held that a police officer had intruded upon the article 11[3] rights of defendant Justin Ford by peering through his

* J.D. May 2012, Rutgers University School of Law – Camden; B.A. May 2009, University of Delaware, International Relations. I wish to thank my family and friends for their endless support and encouragement throughout law school and the beginning of my legal career.

1. 998 A.2d 684 (Vt. 2010).

2. Vermont recognizes that certain areas "outside the physical confines of a house are so intimately tied to the 'privacies of life'" that they should be extended the "'same constitutional protection from unreasonable searches and seizures'" as the physical house itself. *Id.* at 688–89 (citing State v. Rogers, 638 A.2d 569, 572 (Vt. 1993)). This area is known as the "curtilage" of a home. *Id.* Typically, the curtilage of a home includes "the area so immediately and intimately connected to the home," that the individual has a reasonable expectation of privacy. 68 AM. JUR. 2D *Searches & Seizures* § 69 (2010) (citing Garza v. State, 632 N.W.2d 633 (Minn. 2001)). For example, a courtyard and a shed have been found within the curtilage of a home, whereas an open field sitting three hundred feet from a house and the front yard of a duplex were not considered within a home's curtilage. *Id.* The rationale for extending search and seizure protection to curtilage areas also justifies extending recognized exceptions, such as the emergency aid exception, to entry of a curtilage. *See* 3 WAYNE R. LAFAVE, SEARCH & SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(a) (4th ed. 2004).

3. Article 11 of the Vermont Constitution states:

basement window during a welfare check that was prompted by a 9–1–1 call.[4] The Vermont high court held that the officer's search did not satisfy the requirements of Vermont's emergency aid exception as laid out in *State v. Mountford*.[5] The court reversed the defendant's misdemeanor convictions for possession of marijuana and possession of narcotics.[6] This Comment addresses the soundness of the court's decision and the implications for Vermonters and Vermont law enforcement. As explained more fully below, the Supreme Court of Vermont inappropriately limited the scope of the emergency aid exception. In addition, the court unfortunately balked at an ideal opportunity to delineate clear guidelines and to prevent similar future intrusions by law enforcement.

II. STATEMENT OF THE CASE

In the early morning of March 20, 2008, dispatchers received a 9–1–1 call from Stephen Ford.[7] He explained that he had been in an accident and was trapped in his vehicle on Hartford-Quechee Road in Hartford, Windsor County, Vermont.[8] Police and EMS responded to the reported location, but Stephen Ford and his damaged vehicle were not found.[9] Following this unsuccessful rescue effort, Vermont state police directed an officer to perform a welfare check on Stephen Ford at his last known address.[10] The dispatched officer arrived to a dark house at approximately 6 a.m. and reported seeing a snowed-in car in the driveway and no fresh tire tracks

---

> [T]he people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure; and therefore warrants, without oath or affirmation first made, affording sufficient foundation for them, and whereby by any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.

VT. CONST. ch. I, art. 11.

4. *Ford*, 998 A.2d at 692.

5. 769 A.2d 639 (Vt. 2000).

6. *Ford*, 998 A.2d at 686, 692.

7. Stephen Ford is the brother of Justin Ford, the defendant in this case. *Id.* at 686. The 9–1–1 caller said his name was Stephen Ford, although there were no facts in the record to prove he was the actual caller. *Id.* The time of the 9–1–1 call was never established on record. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* Stephen Ford's last known address to police was on Brook Street in Williamstown, Orange County, Vermont. *Id.* This location is more than forty miles away from the closest possible crash site on Hartford-Quechee Road. *Id.* at 690.

leading up to the house.[11] The only tracks the officer observed were footprints leading to a basement door of the house.[12] The officer knew of Stephen Ford from a previous experience with him at this address.[13] Based on that prior interaction, the officer believed that Stephen Ford lived in the basement.[14]

The officer knocked on the front door and announced her presence but received no response.[15] After receiving no response at the front door, the officer decided to check the remainder of the house.[16] She followed a snowmobile track leading around the south side of the house and upon reaching the back of the house, she saw lights coming from the further of two basement windows.[17] The officer stepped off the snowmobile track, knocked on the first window and announced, "State Police, please come to the door."[18] The officer heard no movement from within the house, so she approached the further lit window.[19] As she bent down to look through the window, she saw several small marijuana plants growing in a glass aquarium.[20] The officer saw the marijuana plants through a gap between two curtains.[21] Because she did not see anyone inside the basement room, the officer ended her search and left the premises.[22]

Based on her observations through the basement window, the officer obtained a search warrant for the Brook Street residence.[23] She and other officers returned later that day and seized a dozen marijuana plants, materials used in drug-growing operations, and several oxycodone tablets.[24] During the search, Stephen and Justin Ford's mother identified herself as the owner of the home and informed police that Justin Ford was the only current resident living at the Brook Street residence.[25] Justin Ford was charged with two misdemeanor counts of possession of marijuana and narcotics.[26]

---

11. *Id.* at 686.
12. *Id.*
13. *Id.* at 686–87.
14. *Id.*
15. *Id.* at 687.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.* Stephen and Justin Ford's mother informed police that her son Stephen had not lived at the Brook Street residence for some time. *Id.* Police confirmed that Justin Ford was

The trial court denied defendant's motion to suppress the physical evidence gathered in the afternoon search.[27] Although defendant asserted that the evidence was obtained in violation of his constitutionally protected rights under article 11 of the Vermont Constitution, the trial court found that the initial morning search satisfied the requirements of the emergency aid exception as laid out in *State v. Mountford*.[28] The defendant entered into a conditional plea agreement, admitting guilt pending the outcome of his appeal to Vermont's highest court.[29] Reviewing on a clearly erroneous standard,[30] the Supreme Court of Vermont held that the officer's search did not satisfy the requirements of Vermont's emergency aid exception and therefore did not excuse the officer's infringement of Justin Ford's rights under article 11 of the Vermont Constitution.[31]

III. HISTORY OF ARTICLE 11 AND VERMONT'S EMERGENCY AID EXCEPTION

The Supreme Court of Vermont has "consistently held that Article 11 provides greater protections than its federal analog, the Fourth Amendment . . . ."[32] This extended protection is based on the "traditional Vermont values of privacy and individual freedom-embodied in Article 11 . . . ."[33] Despite its enhanced search and seizure protections, Vermont recognizes that some warrantless invasions into an individual's privacy may be permissible "pursuant to a few narrowly drawn and well-delineated exceptions."[34]

The emergency aid exception[35] is one of these "narrow carve-out[s]" recognized by Vermont courts which provides an exception to the

---

the only current resident of the home by inspecting mail and other personal items addressed to the defendant. *Id.*

26 *Id.*

27. *Id.* Defendant argued that the warrant authorizing the afternoon search was based on the trooper's early morning infraction while peering through his window, and that both searches were therefore unconstitutional under article 11. *Id.*

28. *Id.*; State v. Mountford, 769 A.2d 639, 644 (Vt. 2000).

29. *Ford*, 998 A.2d at 687.

30. *Id.* For appeals from a denial of a motion to suppress, the Supreme Court of Vermont reviews facts deferentially to the trial court and reverses only if findings are clearly erroneous. *Id.* (citing State v. Bryant, 950 A.2d 467, 472 (Vt. 2008)).

31. *Id.* at 692.

32. State v. Cunningham, 954 A.2d 1290, 1295 (Vt. 2008).

33. State v. Bauder, 924 A.2d 38, 42 (Vt. 2007).

34. *Ford*, 998 A.2d at 689 (quoting *Bauder*, 924 A.2d at 44).

35. The emergency aid exception is also referred to as the emergency assistance exception. *Id.* This exception is recognized as one of several "community caretaking functions of the police . . . ." LAFAVE, *supra* note 2, § 6.6(a) (internal quotations omitted).

unconstitutionality of warrantless searches.[36] The exception permits the admission of evidence of illicit activity discovered when police are providing emergency aid to protect life or property.[37] The warrant requirement is relaxed under the exception because it "involve[s] police operating outside their criminal law enforcement and investigation role . . . ."[38]

Vermont first recognized the emergency aid exception to the warrant requirement in 1975.[39] It was not until the year 2000 that the exact contours of the exception were delineated by the Vermont high court in *State v. Mountford*.[40] In *Mountford*, the court adopted a three-part analysis developed by the New York Court of Appeals in *People v. Mitchell*.[41] The *Mountford*/*Mitchell* test places the burden on the prosecution to demonstrate all three elements.[42] The first element requires that the police have "reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property."[43] The second element is a subjective inquiry, which requires that the police were not "primarily motivated by intent to arrest and seize evidence."[44] The

---

36. *Ford*, 998 A.2d at 689; *see also* State v. Mountford, 769 A.2d 639, 643–44 (Vt. 2000); State v. Connolly, 350 A.2d 364, 368 (Vt. 1975). The United States Supreme Court has also acknowledged the emergency aid exception. *See* Mincey v. Arizona, 437 U.S. 385, 392–93 (1978).

37. *Ford*, 998 A.2d at 689 (citing *Mountford*, 769 A.2d at 643–44).

38. *Id.* (citing *Mountford*, 769 A.2d at 643 n.*).

39. *Connolly*, 350 A.2d at 368.

40. 769 A.2d at 645.

41. *Id.*; People v. Mitchell, 347 N.E.2d 607, 609 (N.Y. 1976), *abrogated as applied to Federal Constitution by* Brigham City v. Stuart, 547 U.S. 398 (2006).

42. *Ford*, 998 A.2d at 689 (citing *Mountford*, 769 A.2d at 646).

43. *Id.* (quoting *Mountford*, 769 A.2d at 644). The first prong is an objective inquiry based on "empirical facts rather than subjective feelings." *Mitchell*, 347 N.E.2d at 609–10. The requirement of objectivity, however, is "not an invitation to 'evaluate, by hindsight, actions taken by police based on an immediate reaction to the circumstances that faced them.'" *Ford*, 998 A.2d at 690 (quoting *Mountford*, 769 A.2d at 646).

44. *Ford,* 998 A.2d at 690 (quoting *Mountford*, 769 A.2d at 644). The United States Supreme Court eliminated any federal subjective inquiry into an officer's motivations in *Brigham City*, holding that actions are "reasonable" under the Fourth Amendment regardless of the officer's subjective intentions, so long as the search was objectively justified. 547 U.S. at 404 (citing Scott v. United States, 436 U.S. 128, 138 (1978)).

Interestingly, Wayne LaFave recognized in 2004 that "[w]hether this second element continues to have vitality as a Fourth Amendment matter is unclear." LAFAVE, *supra* note 2, § 6.6(a), at 454 n.17 (discussing *Mountford*). In particular, LaFave cited *Mitchell* as an example of a situation invoking the emergency aid exception as well as an example of a court utilizing the subjective second prong inquiry. *Id.* at 453–55. Likewise, John F. Decker has discussed the "dramatic differences" between the methods of analysis of different state courts. John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions*,

third element of the test requires "some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched."[45]

IV. THE COURT'S REASONING

A. The Majority

The 3–2 majority[46] reasoned that the search of Justin Ford's home failed to meet the requirements of the first and third prongs of the emergency aid exception under the *Mountford*/*Mitchell* test.[47] The court found that the officer's search failed the first prong because "there was no showing of an immediate need for police assistance at defendant's home based on the facts before the trial court."[48] When analyzing this requirement, the Vermont Supreme Court focused on the vague 9–1–1 call that reported a car accident over forty miles from Stephen Ford's last known address.[49] The court directed that the officer needed "more than footprints and a darkened home

89 J. CRIM. L. & CRIMINOLOGY 433, 439–40 (1999). Decker explains that the motivational requirement of the subjective inquiry "distinguishes the emergency exception from most other exceptions" and finds "it is essential that the desire to aid or protect be a primary, or at least a substantial, part of the officer's good faith subjective motivation." *Id.* at 511.

45. *Mountford*, 769 A.2d at 644. The *Mitchell* court elaborated that there must be a "direct relationship between the area to be searched and the emergency." 347 N.E.2d at 610. For further discussion on the "direct relationship" standard and how it applies to *Ford*, see *infra* note 82.

46. *Ford*, 998 A.2d at 686.

47. *Id.* at 690.

48. *Id.*

49. *Id.* The majority was skeptical of the lack of evidence explaining why the state police would think Stephen Ford was in Williamstown, at least forty miles away from the location of the reported accident. *Id.* The majority also expressed concern that the officer had no justification to believe that the motorist was inside the home and in need of assistance, considering she arrived at a "darkened house with a snowed-in car in the driveway and no sign of inhabitants beyond footprints more recent than the last snowfall." *Id.* at 690–91. The majority suggested that the officer should have completed her welfare check inquiry and left the property after receiving no response at the front door. *Id.* at 691. The majority explained that additional evidence was necessary in order to justify a continued search of the premises, given it was based solely on the vague 9–1–1 call. *Id.* However, the court noted that its holding did not necessarily prevent future emergency aid exceptions based solely on 9–1–1 calls. *Id.* at 691 n.2 ("Had [the officer] discovered evidence supporting a reasonable belief that there was an immediate need for emergency assistance in [Ford's driveway and dooryard], she could have continued her search.").

to reasonably believe emergency assistance was immediately necessary."[50] The Vermont high court also determined that the officer's search failed the third prong of the *Mountford*/*Mitchell* test.[51] The court expounded on their reasoning of the first prong and explained that the officer had no probable cause to associate the 9–1–1 call forty miles away with the scope of the search she conducted.[52] The Supreme Court of Vermont did not address the second prong of the *Mountford*/*Mitchell* test, holding that failure of the first and third prongs was sufficient to determine that the officer's search was unconstitutional.[53]

---

50. *Id.* at 691. The court summarized that there was simply insufficient evidence to suggest there was an ongoing emergency inside the home. *Id.* The court's reasoning indicates that had the officer witnessed Stephen Ford's damaged vehicle outside the home or even tire tracks leading up to the home, she would have been permitted to extend her search. *See, e.g.*, City of Troy v. Ohlinger, 475 N.W.2d 54, 55 (Mich. 1991) (responding to a report of injury accident, officer found residence from license plate reference and saw damaged car outside the home); City of Fargo v. Ternes, 522 N.W.2d 176, 177 (N.D. 1994) (responding to a hit and run injury accident, officers saw damaged pickup with blood stains on truck seat and door of residence).

51. *Ford*, 998 A.2d at 691.

52. *Id.* at 691–92. The court emphasized that there was "no evidence that the accident had actually happened or that anyone was actually injured." *Id.* at 692. Without this, the scope of the search could not be enlarged "without limit and without reason." *Id.* According to the court, the officer exceeded the justifiable scope of her search when she began to search the grounds of the home and look into the basement windows. *Id.* at 691. Focusing on the forty mile distance from the location of the alleged accident to the defendant's home, the court determined that there was "scant evidence connecting defendant's home with the 9–1–1 call." *Id.* at 692.

Ultimately, the inability to locate Stephen Ford meant different things to the high court and to the State. The court was not persuaded by the State's position that the scope of the search "necessarily expanded when police were unable to find the motorist on the Hartford-Quechee Road . . . ." *Id.* at 692. The State and the officer believed Stephen Ford's absence indicated a greater emergency, whereas the court ultimately determined that his absence was reason to stop the search. *Id.* at 690–91. Perhaps the court's position was not that the search for Stephen Ford should have ended, but that the search *at his home* should have ended. The dissent argued this position may be risky because it "requires accident victims to leave visible signs, such as blood tracks or a wrecked vehicle, before a police officer . . . can lawfully" search their property in a potential emergency. *Id.* at 692 (Reiber, C.J., dissenting).

53. *Id.* at 690 (majority opinion). By avoiding the second prong, the court was able to refrain from addressing how *Brigham City v. Stuart*, 547 U.S. 398 (2006), affected Vermont's state emergency aid analysis. *Id.* In response to the Supreme Court's elimination of the second subjective inquiry under *Mountford*/*Mitchell*, the Vermont Supreme Court was only willing to announce that "our holding in this case does not depend on [the] second prong" and "the other two prongs remain valid." *Id.*

B. The Dissent

In dissent, Chief Justice Reiber felt that the majority was reading the emergency aid exception too narrowly.[54] He also disagreed with the majority's conclusion that there was no pending emergency.[55] He countered the majority's analysis, emphasizing that other jurisdictions[56] have recognized 9–1–1 calls sufficient to support a warrantless search, particularly when the caller identifies himself.[57] The dissent disagreed with the majority's application of the first and third prongs of the *Mountford*/*Mitchell* test.[58] The dissent also disagreed that the distance between the alleged accident and the area searched made the search unreasonable.[59] The dissent argued that when the officer arrived, she already had a reasonable belief that an emergency existed, and therefore did not need any additional evidence to extend the scope of her search.[60] Most importantly, the dissent argued that the majority had undermined the fundamental deference inherent in the *Mountford*/*Mitchell* analysis.[61]

---

54. *Id.* at 692 (Reiber, C.J., dissenting). Chief Justice Reiber conceded that this was a close case, but believed that the officer's actions were justified. *Id.* He emphasized that the benefit of hindsight should not affect the court's analysis and in close cases the court should be deferential to the trooper's evaluation of the situation. *Id.* at 693.

55. *Id.* at 694.

56. *Id.* at 692–93; *see* United States v. Richardson, 208 F.3d 626, 630 (7th Cir. 2000) (holding that "[t]he efficient and effective use of the emergency response networks requires that the police . . . be able to respond to such calls quickly and without unnecessary second-guessing"); *see also* United States v. Cunningham, 133 F.3d 1070, 1072–73 (8th Cir. 1998) (finding a protective sweep of an apartment reasonable under the emergency aid exception of the Fourth Amendment, following a 9–1–1 call by a woman claiming she was being held against her will).

57. *Ford*, 998 A.2d at 692–93 (Reiber, C.J., dissenting). The dissenting justice also noted that in *Mountford*, the court had warned that "[t]he business of policemen and firemen is *to act*, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process." *Id.* at 693 (citing State v. Mountford, 769 A.2d 639, 646 (Vt. 2000)).

58. *Id.* at 693–94.

59. *Id.* at 693.

60. *Id.* at 694. The dissent discussed how the *Mitchell* court rejected the idea that "obvious signs which connect the place to be searched with the emergency. . . [are] needed to invoke the emergency aid exception . . . ." *Id.* (internal quotations omitted) (citing People v. Mitchell, 347 N.E.2d 607, 610 (N.Y. 1976)). There were no such clues in *Mitchell*, but the court held that the emergency aid exception still applied. *Id.* Because Vermont bases its emergency aid exception analysis on *Mitchell*, the dissent asserted that the majority had ruled inconsistently with the foundation of the *Mountford*/*Mitchell* analysis. *Id.* at 693–94.

61. *Id.* The dissent emphasized the importance of deferring to the responding officer's evaluation of the situation, invoking this call for deference several times. *See id.* at 695–96

V. ANALYSIS AND IMPLICATIONS

A. Analysis

The Supreme Court of Vermont inappropriately limited the scope of Vermont's emergency aid exception. The court neglected the necessary deference inherent in the *Mountford*/*Mitchell* analysis and discounted the weight due to the 9–1–1 call itself. Not only did the court mistakenly apply the first and third prongs of the analysis, it avoided the second prong altogether, and may have missed an ideal opportunity to clarify Vermont search and seizure law for Vermonters and law enforcement alike.

1. First Prong

The majority explained that the first prong of the *Mountford*/*Mitchell* analysis requires that police have an objectively reasonable ground to believe there is a current emergency requiring their assistance.[62] The court also emphasized that although hindsight is 20/20, police actions must be analyzed for their reasonableness in the moment.[63] Although the court gave credence to the importance of objective reasonableness,[64] it did not act with the necessary deference inherent in such objectivity.[65] Instead, the court became unnecessarily stalled on the distance from the 9–1–1 call site to Justin Ford's home.[66] While forty miles is a considerable distance, the police were aware of the caller's last known address.[67] Armed with a 9–1–1 call and the possibility of an injured motorist, the officer acted reasonably when conducting the welfare check that she was sent to accomplish.[68] This officer was acting with the "distinguishing feature" of the emergency aid exception: she had a desire to aid a potential victim rather than investigate a criminal.[69]

(arguing that it was especially necessary to defer to the officer's perception of specific facts, such as the recentness of footprints in the snow).

62. *Id.* at 689–90 (majority opinion).

63. *Id.* at 690. This deferential standard only requires the officer's objectively reasonable belief that an emergency existed. *See* Decker, *supra* note 44, at 457 ("No actual emergency need be present in order to satisfy the doctrine.").

64. *Ford*, 998 A.2d at 689–90.

65. *See supra* notes 54–61.

66. *See Ford*, 998 A.2d at 690–92.

67. *See supra* note 49 and accompanying text.

68. *See Ford*, 998 A.2d at 694 (Reiber, C.J., dissenting).

69. *Id.* at 689 (majority opinion).

Compared against examples from other states and circuits,[70] the officer's entry onto Ford's property seemed reasonable under the circumstances.[71]

At the time she was dispatched, the officer was made aware that responding EMS and law enforcement officers to the scene on Hartford-Quechee Road were unable to locate Stephen Ford.[72] Logically, Stephen Ford was somewhere.[73] He had felt endangered enough to call 9–1–1, identify himself and his location and ask for assistance.[74] Armed with this objectively reasonable ground to believe there was an emergency, it was not unreasonable for the officer to extend her search past her initial knocking. The officer was aware that Ford had lived in the basement at one time and also knew that he could have been injured and unable to respond to her knocking.[75] Therefore, her walking around the side of the house and looking into a lit basement window was not objectively unreasonable. In fact, the officer saw footprints leading to the back of the house and followed those

---

70. Wayne LaFave notes that "there are an infinite variety of situations in which entry for the purpose of rendering aid is reasonable." LAFAVE, *supra* note 2, § 6.6(a), at 459. LaFave references a variety of situations that have been considered sufficient to warrant reasonable entry for the purpose of rendering emergency aid, such as to thwart an apparent suicide attempt, rescue people from a burning building, or investigate a suspicious telephone call from the premises. *Id.*, § 6.6(a), at 459–66 (citing numerous state and federal cases).

71. *See id.* The officer's conduct seems especially reasonable because she did not cross the threshold of the home itself, which was found reasonable in one example cited by LaFave. *Id.* at 459 n.30. The missing person cases are particularly persuasive. *Id.* at 459 n.33; *see also id.* at 466 n. 45 (citing State v. Emerson, 375 N.W.2d 256 (Iowa 1985) (ruling that deputy could enter property when he found no one at farm, after telephone caller said accident at farm was emergency, but inexplicably said no ambulance was needed)).

72. Brief for Appellant, State v. Ford, 998 A.2d 684 (Vt. 2010) (No. 2008–490), 2009 WL 714114 at *6.

73. Decker includes missing persons in a list of "categories of events which reviewing courts have agreed generally provide a government agent with a reasonable belief in the existence of an emergency." Decker, *supra* note 44, at 459, 466. Decker recognizes that "[w]hile some courts have accepted the report of a missing person alone to be sufficient in establishing an emergency, more often, courts also look to the circumstances surrounding the report to see if the belief that an emergency existed was reasonable." *Id.* at 466. Nevertheless, Decker observes that "[c]ourts have upheld searches for a missing person at his or her residence." *Id.* (citing People v. Bondi, 474 N.E.2d 733, 736 (Ill. App. Ct. 1984) (holding that the warrantless search of a murder victim's property was objectively reasonable after she was reported missing)).

74. *Ford*, 998 A.2d at 686.

75. *Id.* at 693 (Reiber, C.J., dissenting). On the other hand, the majority translated the lack of response to her knocking as an indicator that no one was home. *Id.* at 691 (majority opinion). The majority emphasized that the 9–1–1 caller did not mention any physical injuries and quickly dismissed the possibility that someone could have been inside the home and unable to reach the door due to their need for medical attention. *Id.*

footprints.[76] In the moment, the officer reasonably feared that Stephen Ford could be inside his home and in need of emergency assistance. The 9–1–1 call, the unsuccessful search on Hartford-Quechee Road, the footprints and the officer's knowledge that Stephen Ford had once lived in the basement made the officer's search objectively reasonable and satisfactory under the first prong of the *Mountford*/*Mitchell* analysis.

2. Third Prong

The third prong of the *Mountford*/*Mitchell* analysis requires there be a reasonable basis to associate the emergency with the place to be searched.[77] The *Mitchell* court specified that there must be a "direct relationship" between the search area and the emergency.[78] Assuming, as discussed above, that the 9–1–1 call created an emergency, there was a logical direct relationship between the 9–1–1 caller and his last known address. Perhaps if the caller's last known address was in another state or a lengthy drive from the accident site, that relationship would be attenuated. However, because a forty mile distance can be traversed in a relatively short period of time, there was a reasonable basis to associate the 9–1–1 call with Stephen Ford's last known address. Contrary to the majority's ruling, the third prong of the *Mountford*/*Mitchell* analysis was met.

The majority again stalls on the fact that there was no evidence confirming the accident had actually happened or that anyone was actually injured.[79] However, this theory blends the analysis of the first and third

76. *Id.* at 693 (Reiber, C.J., dissenting). The footprints in the snow became a point of contention between the majority and dissent. The trial court initially found that the officer had seen "recent footprints leading to the basement door." *Id.* at 688 (majority opinion). On appeal, the defendant challenged that finding and the majority agreed, finding "no evidence to support the finding that the footprints or entry into the residence were recent." *Id.* However, the majority's conclusion begs the question: what type of evidence at trial *would* have supported such a finding that the footprints were recent? It is likely, as the dissent suggests, that the officer may have "assume[d], without declaring, and especially in an emergency, that footprints in snow are either recent enough to bear following or not necessarily so old as to be irrelevant." *Id.* at 695 (Reiber, C.J., dissenting). Cast in this light, the majority's reversal of the trial court's finding seems unnecessary, especially after emphasizing the need to defer to the trooper's evaluation of the situation. *See id.* at 690 (majority opinion). If the footsteps are accepted as potentially recent, they are "consistent with the supposition that an injured accident victim, not found at the scene of a reported accident, could be inside his home." *Id.* at 696 (Reiber, C.J., dissenting).

77. *Id.* at 690 (majority opinion).

78. *Id.* (citing People v. Mitchell, 347 N.E.2d 607, 610 (N.Y. 1976)).

79. *Id.* at 692.

prongs. Once an emergency is established, the third prong only asks one question: was there a direct relationship between the area searched and the emergency at hand?[80] Here, that direct relationship was Stephen Ford. Hindsight shows there was no one present or injured inside the home and that Stephen Ford was no longer living at the Williamstown location.[81] However, these revelations should not affect the "direct relationship" analysis.[82] The same reasoning employed in *Mitchell* supports the finding of a direct relationship in *Ford*. Similar to how there were no "obvious signs" in *Mitchell* to connect the defendant's hotel room with the missing maid,[83] in *Ford* there were no "obvious signs" to connect the Williamstown address with the alleged accident site over forty miles away.[84] However, the lack of these "obvious signs" did not prevent the *Mitchell* court from finding a direct relationship.[85]

The Vermont Supreme Court in *Ford* failed to adopt this comprehensive "direct relationship" standard and instead became unnecessarily focused on the lack of direct evidence connecting the emergency with the area to be searched.[86] Had the majority in *Ford* adopted the standard set out in *Mitchell*,

---

80. *Id.* at 690. *See also* State v. Mountford, 769 A.2d 639, 644 (Vt. 2000) (noting the third prong is used to analyze whether a search has "some reasonable basis, approximating probable cause, to associate *the emergency* with the area or place to be searched." (emphasis added)).

81. *Ford*, 998 A.2d at 687.

82. The direct relationship analysis introduced by *Mitchell* was based on the idea that "the limited privilege afforded to law enforcement officials by the emergency exception does not give them carte blanche to rummage for evidence if they believe a crime has been committed." *Mitchell*, 347 N.E.2d at 610. In discussing the potential ways such a "direct relationship" could be found, the Court of Appeals of New York explained that in some cases, there are "obvious signs" that connect the place to be searched with an emergency, satisfying the third prong of the emergency aid exception analysis. *Id.* The court explained that hearing screams or smelling the odor of a decaying corpse would be examples of "obvious signs" indicating such a direct relationship. *Id.* However, the court indicated that circumstantial evidence can also fulfill the direct relationship standard in certain circumstances. *Id.* at 608–11 (finding direct relationship test satisfied by circumstantial evidence that the defendant's room was the last to be searched on the sixth floor, where a missing maid had last been seen, and her partially eaten lunch and street clothes had been found by a hotel guest).

83. *See id.*

84. *Ford*, 998 A.2d at 691–92.

85. *Mitchell*, 347 N.E.2d at 611. Instead of stalling on the lack of direct evidence linking the defendant's hotel room to the missing maid emergency, the New York Court of Appeals analyzed the totality of the circumstances and reasonably looked to circumstantial evidence to find a direct relationship between the place to be searched and the emergency at hand. *Id.* at 610–11.

86. *Ford*, 998 A.2d at 691–92.

it would certainly have found a direct relationship between the Williamstown residence and the alleged accident site on Hartford-Quechee Road, yet, the majority in *Ford* ignored the circumstantial evidence.[87] While the majority never explicitly adopted the *Mitchell* "direct relationship" standard in *Mountford* or *Ford*, the majority did mention it during its discussion of the third prong in *Ford*.[88] The *Ford* majority's insistence on the lack of direct evidence and disregard for relevant circumstantial evidence represents a significant movement away from the third prong standards enunciated in *Mitchell*.[89]

3. Second Prong

Ford leaves the second prong of the *Mountford*/*Mitchell* analysis in legal limbo. As applied to federal search and seizure claims, the United States Supreme Court decision in *Brigham City v. Stuart*[90] declared that an "officer's subjective motivation is irrelevant."[91] The Court explained that its jurisprudence had consistently rejected any subjective analysis into an officer's state of mind.[92] *Brigham City* does not provide any specific reason why subjective motivation is irrelevant, beyond stating that the issue is

87. *See id.* at 692 (the majority refers to the "scant evidence connecting [the] defendant's home with the 9–1–1 call . . . the [vague] nature of the emergency . . . and no basis to associate defendant's empty house with that emergency . . . ."). However, the 9–1–1 call, the unsuccessful search on Hartford-Quechee Road, Ford's last known address forty miles away, the potentially recent footprints leading around to the back of the house, the officer's knowledge that Ford once lived in the basement and the lit basement window are all pieces of circumstantial evidence that created a direct relationship between the emergency at hand and the area to be searched. *Id.* at 691–92.

88. *Id.* at 690; *see also* State v. Mountford, 769 A.2d 639, 647 (Vt. 2000) (citing *Mitchell* in a discussion of reasonable basis to associate emergency with place to be searched).

89. *See Mitchell*, 347 N.E.2d at 611 ("Constitutional guarantees of privacy and sanctions against their transgression do not exist in a vacuum but must yield to paramount concerns for human life and the legitimate need of society to protect and preserve life."). This specific departure is consistent with the Vermont Supreme Court's general departure from the fundamental deference standard inherent in the *Mitchell* test. *See Ford*, 998 A.2d at 691–92.

90. 547 U.S. 398 (2006).

91. *Id.* at 404.

92. *Id.* The Court first voiced its rejection of subjective inquiries in *Scott v. United States*. 436 U.S. 128, 138 (1978). In *Scott*, the Court held that searches challenged under the Fourth Amendment should be examined "under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved." *Id*; *see also* Bond v. United States, 529 U.S. 334, 338 n.2 (2000); Whren v. United States, 517 U.S. 806, 813 (1996); Graham v. Connor, 490 U.S. 386, 397 (1989).

instead "the objective effect of [the officer's] actions."[93] The *Brigham City* opinion[94] not only abrogated the *Mountford*/*Mitchell* analysis as it applied to federal search and seizure violations, but did the same for a Ninth Circuit case utilizing subjective intent, *United States v. Cervantes*.[95]

The Supreme Court of Vermont's decision to adopt the New York standard from *People v. Mitchell* represents Vermont's choice of horizontal judicial federalism.[96] Interestingly, the court acknowledged that "it requires

---

93. *Brigham City*, 547 U.S. at 404 (citing *Whren*, 517 U.S. at 813). Three years after *Brigham City*, the Court reaffirmed its rejection of any investigation into an officer's subjective motivation, specific to the emergency aid exception, in *Michigan v. Fisher*. 130 S. Ct. 546, 548 (2009). The *Fisher* case involved police response to a complaint of a disturbance where a man was "going crazy." *Id.* at 547. When the officers arrived on scene, they observed "a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fence posts along the side of the property, and three broken house windows . . . [also] blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house." *Id.* Through a window the officers observed the defendant screaming and throwing things. *Id.* When defendant demanded officers get a search warrant, one officer began to open the front door and ventured into the house. *Id.* However, the officer withdrew when he saw the defendant pointing a gun at him. *Id.* The trial court granted the defendant's motion to suppress the officer's statement that defendant had pointed a gun at him, as evidence obtained as a result of an unconstitutional search. *Id.* The Michigan Court of Appeals affirmed and the Michigan Supreme Court denied leave to appeal. *Id.* at 547–48. Granting certiorari, the Court reversed and reiterated that "[the] 'emergency aid exception' does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises." *Id.* at 548 (citing *Brigham City*, 547 U.S. at 404–05). The Court explained its holding in *Brigham City* as "requir[ing] only an objectively reasonable basis for believing that a person within [the house] is in need of immediate aid." *Id.* (internal citations and quotations omitted). The Court emphasized that "ironclad proof" of a serious, life-threatening injury is unnecessary to invoke the emergency aid exception. *Id.* at 549. "[T]he test, as we have said, is not what [the officer] believed, but whether there was 'an objectively reasonable basis for believing' that medical assistance was needed, or persons were in danger." *Id.* (citing *Brigham City*, 547 U.S. at 406; Mincey v. Arizona, 437 U.S. 385, 392 (1978)).

94. The Court was unanimous with one concurrence from Justice Stevens, discussing the peculiarity of the case and explaining why his vote to deny Utah's petition for certiorari was correct. *Id.* at 407–09 (Stevens, J., concurring).

95. 219 F.3d 882, 890 (9th Cir. 2000), *abrogated as applied to Federal Constitution by* Brigham City v. Stuart, 547 U.S. 398 (2006).

96. *See* State v. Mountford, 769 A.2d 639, 644 (Vt. 2000). Horizontal judicial federalism is the concept that while a state's high court is expounding its state constitution, statutes and legal precedents, it may look to precedents of sister courts for guidance. G. ALAN TARR & MARY CORNELIA ALDIS PORTER, STATE SUPREME COURTS IN STATE AND NATION 27 (1988). A state supreme court's reference to or adoption of a sister court's legal principals "derives from their persuasiveness rather than from the legal position of the court that announced them." *Id.* Tarr and Porter indicate that "[m]ost obviously such decisions may serve as precedents in factually similar cases, at times persuading a court of the wisdom or

us to delve into the subjective motivation of police officers, an inquiry courts usually find inappropriate in Fourth Amendment cases."[97] However, Vermont found an exception for searches conducted in the absence of probable cause, such as searches arising under the emergency aid exception.[98] The Vermont court explained that in such cases, "the Supreme Court has indicated that examining the subjective motivations of officers is necessary to assure that the civil or quasi-criminal searches do not serve as a pretext for criminal investigations."[99] In *Brigham City*, however, the court rejected this construction of its case law, especially Vermont's use of *Whren*

---

propriety of a particular outcome, and at other times affording justification for a step which it might otherwise have been reluctant to take." *Id.* at 30. Vermont's geographic proximity to New York may be one reason for the Vermont Supreme Court's consideration of New York precedent. *See id.* at 32–33 (citing considerations affecting horizontal judicial federalism, such as "[s]hared experiences and perspectives among state populations," and "geographic proximity, patterns of migration, legal capital, and legal reporting regions . . . .").

Vermont's tendency toward horizontal judicial federalism can also be found in its adoption of a different, yet related concept: the "state law first" approach. *See id.* at 30 n.82 (citing State v. Badger, 450 A.2d 336 (Vt. 1982)). In the 1970s, Justice Hans Linde of the Oregon Supreme Court championed the "state law first" approach, which "obliges state supreme courts, when confronted with claims based on both state and federal law, to resolve the question of state law first and to address the federal question only if the issue cannot be resolved on the basis of state law." *Id.* at 30. Vermont, along with Washington and Maine, adopted the doctrine in 1982. *Id.* at 30 n.82.

While the Supreme Court of Vermont was certain to emphasize that *Ford* only implicated a claim under article 11 of the state constitution, Vermont's adoption of the "state law first" doctrine demonstrates the court's tendency toward horizontal judicial federalism, particularly when first adopting the *Mountford*/*Mitchell* analysis. 998 A.2d, 684, 688 n.1 (Vt. 2010). The court continued to demonstrate its inclination for horizontal reliance in *Ford*, by repeatedly citing to the *Mountford*/*Mitchell* test and utilizing *Mitchell* to define the parameters of the holding in *Mountford*. *See id*. at 689–90; *see also infra* note 113 for a discussion on vertical judicial federalism.

97. *Mountford*, 769 A.2d at 644. When acknowledging its departure from Fourth Amendment cases, the Vermont Supreme Court cited *Whren v. United States*, 517 U.S. 806 (1996), the same case cited by the Court in *Brigham City* for the opposite proposition. *Id.* at 645; *see also Brigham City*, 547 U.S. at 404.

98. *Mountford*, 769 A.2d at 645.

99. *Id.* (citing *Whren*, 517 U.S. at 811–12); *see also Cervantes*, 219 F.3d at 890 (adopting the second prong from *Mitchell* and explaining that "absent probable cause, examining a government actor's motivation for conducting an emergency search provides a necessary safeguard against pretextual reliance on community caretaking interests to serve criminal investigation and law enforcement functions.").

v. United States.[100] The Supreme Court contested Vermont's expansion of *Whren* by citing it for the opposite proposition in *Brigham City*.[101]

Despite this deliberate opposition, the Vermont Supreme Court declined to determine how *Brigham City* impacted its own state search and seizure analysis.[102] By avoiding the issue, the Vermont Supreme Court appears to have left the state's traditional *Mountford*/*Mitchell* analysis intact. However, the court's refusal to confirm this implication leaves the test in question for trial judges, law enforcement, and Vermonters.[103]

B. Implications

The implications of this decision are two-fold. First, the Vermont emergency aid exception has been stunted, as the *Ford* decision abandons the *Mountford*/*Mitchell* objectively reasonable standard of the first prong in favor of a much stricter standard.[104] The court claims to apply its precedent correctly, but there is no doubt that its conclusion was assisted by the current knowledge that no emergency existed.[105] The Vermont Supreme Court has

---

100. *Brigham City*, 547 U.S. at 402, 404–05.

101. *Id.* In *Brigham City*, the Supreme Court effectively rejected the analysis of *Mountford*, *Mitchell*, and *Cervantes*. *See id.*

102. The court was only willing to offer that the first and third prongs remained valid following *Brigham City*. State v. Ford, 998 A.2d 684, 690 (Vt. 2010). The court avoided any discussion of the second prong, "because [the] holding in this case [did] not depend on [the] second prong of the *Mountford*/*Mitchell* test . . . ." *Id.*

103. One could argue that the *Mountford*/*Mitchell* test is not in question because the court explained why they did not reach the second prong; the officer's search failed under the first and third prongs, which was sufficient to fail the emergency aid exception standard. *Id.* From this perspective, additional discussion regarding the second prong and the effect of *Brigham City* would be dictum. Yet this would not explain why the majority would choose to skip over the second prong, but continue to address the third. If the second prong was an unnecessary element to address, then addressing the third prong was also superfluous. From this standpoint, once the court established that the first prong failed the *Mountford*/*Mitchell* analysis, the analysis could and should have ended there. Because the court determined that the second prong was avoidable only after addressing the first and third prongs, this insinuates that the Supreme Court of Vermont was not only unwilling but also unprepared to reply to the United States Supreme Court's *Brigham City* decision.

104. *Id.* at 689–90. The majority did not believe that the 9–1–1 call was an objectively reasonable indication of an emergency. *Id.* at 690. The dissent disagreed with this analysis. *See supra* note 54 and accompanying text.

105. *See Ford*, 998 A.2d at 691 (reasoning that "[t]he lack of a response to her knocking, without more, was insufficient to support a belief that anyone was inside the house or that there was an immediate need for medical attention."); *but see id.* at 693 (Reiber, C.J., dissenting) (countering that "[a]fter several attempts at knocking and announcing her presence, but hearing no reply, she concluded that an injured person might be unconscious or

thus narrowed the emergency aid exception and required that an officer's actions not only be objectively reasonable in the moment, but also accurate in hindsight. This abandons the necessary deference inherent in the original *Mountford*/*Mitchell* analysis.[106] This decision will encourage Vermont police to stop and analyze the likely accurateness of their gut reactions before responding to emergencies.[107] Even more dangerous, *Ford* warns that 9–1–1 calls do not immediately commence an emergency.[108] Officers are now encouraged to perform superficial welfare checks instead of actually determining if an individual inside a home needs assistance.[109] These implications not only reach the boundaries of this case, but extend down into the purposes of the emergency aid exception. These implications have the potential to nullify the policy goal of encouraging law enforcement to respond to emergency situations.

The Vermont Supreme Court not only disturbed the first prong standards from *Mountford*/*Mitchell*, but avoided the second prong to the extent that its fate in Vermont is questionable.[110] The Supreme Court's decision in *Brigham City* not only abrogated the *Mountford*/*Mitchell* test as it applied to federal search and seizure claims, but it also indirectly called into question Vermont's own article 11 analysis.[111] With Vermont's reasoning behind the subjective second prong criticized by the United States Supreme Court,[112] there was a great need in *Ford* for Vermont's high court to explain the fate of

---

otherwise incapacitated and therefore unable to answer the door. To determine whether there was a seriously injured person inside the house, she peered through a window.").

106. *See Ford*, 998 A.2d at 690 (majority opinion) (explaining that analysis of the first factor "is deferential and not an invitation to 'evaluate, by hindsight, actions taken by police based on an immediate reaction to the circumstances that faced them.") (quoting State v. Mountford, 769 A.2d 639, 646 (Vt. 2000)).

107. *Id.* at 697 (Reiber, C.J., dissenting). The dissent warns that the holding "requires accident victims to leave visible signs, such as blood tracks or a wrecked vehicle, before a police officer, absent any evidence of pretense, can lawfully follow a path around a house and take a cursory look in a window for signs of a person thought to be injured." *Id.* at 692.

108. *Id.* at 692–93; *see also supra* notes 56–57.

109. *Ford*, 998 A.2d. at 697 (Reiber, C.J., dissenting).

110. *See supra* note 53 and accompanying text.

111. When Vermont adopted the three part emergency aid analysis, it relied on *Whren* to justify the addition of the subjective second prong. *Mountford*, 769 A.2d at 645 (citing United States v. Whren, 517 U.S. 806, 811–12 (1996)). However, in *Brigham City* the U.S. Supreme Court denounced such an extension of its decision in *Whren* and therefore nullified Vermont's reasoning behind the subjective second prong of the Vermont emergency aid exception analysis. Brigham City v. Stuart, 547 U.S. 398, 404–05 (2006).

112. *Brigham City*, 547 U.S. at 404–05.

its former three-pronged emergency aid exception analysis.[113] The Vermont Supreme Court passed on this opportunity and the validity of the second prong remains in question.[114] *State v. Ford* presented an ideal opportunity for the state of Vermont to defend its subjective emergency aid analysis. While the Supreme Court has eliminated inquiry into an officer's subjective motivations,[115] Vermont had the power to distinguish itself[116] and maintain

---

113. Vertical federalism is a concept that has traditionally pressured state supreme courts to conform to U.S. Supreme Court positions. *See* BARRY LATZER, STATE CONSTITUTIONS AND CRIMINAL JUSTICE 167 (1991). Latzer explains that "[t]he Warren, Burger and Rehnquist Courts have all sought to insure conformity with their interpretations of the U.S. Constitution, whether liberal or conservative." *Id.* He cites the Supremacy Clause and the doctrine of stare decisis as the Court's "chief legal weapons" to encourage vertical conformity. *Id.* In addition, state supreme courts are threatened by the possibility of Supreme Court review and reversal of any decision out of line with Supreme Court precedent. *Id.* Latzer proposes that there may be reason to believe that these traditional vertical pressures are eroding due to a variety of factors, such as the ability for state supreme courts to decide cases on alternative state law grounds, the sheer vastness of state supreme court output, and the lack of consensus among Supreme Court Justices. *Id.* at 167–69. However, Tarr and Porter point out that even "state supreme court rulings premised on independent and adequate state grounds . . . are not immunized from federal habeas corpus review." TARR & PORTER, *supra* note 96, at 9 n.17.

114. *See supra* note 53 and accompanying text.

115. *See supra* note 44. For an interesting perspective on *Brigham City* and subsequent case law from a law enforcement perspective, see Devallis Rutledge, *The "Emergency Aid Doctrine"*, POLICE MAGAZINE, Feb. 5, 2010, *available at* http://www.policemag.com/Channel/Patrol/Articles/2010/02/The-Emergency-Aid-Doctrine.aspx.

116. To avoid potential review by the U.S. Supreme Court, the Supreme Court of Vermont utilized the alternative state law grounds tactic by emphasizing that the defendant's argument was grounded solely in Vermont law. State v. Ford, 998 A.2d 684, 688 n.1 (Vt. 2010) (explaining that the decision was based specifically on article 11 of the Vermont Constitution and "all references to federal cases [were] by way of illustration only"). The court also took the opportunity to reiterate that "Vermont values of privacy and individual freedom—embodied in Article 11—may require greater protection than afforded by the federal Constitution." *Id.* (quoting State v. Bauder, 924 A.2d 38, 42 (Vt. 2007)).

The Vermont Supreme Court's unambiguous declaration that its decision rested on state law grounds was in line with the direction of the Supreme Court in *Michigan v. Long*. 463 U.S. 1032, 1041 (1983) (stating that "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision"). The *Long* Court directed that to avoid Supreme Court review, a state supreme court "need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached." *Id.* With such a simple route to avoid Supreme Court review, escaping the constraints of vertical federalism does not seem so difficult after all. Interestingly, Tarr and Porter identify search and seizure law as a common topic in which state supreme courts refuse to adhere to vertical

the subjective inquiry,[117] thus providing broader search and seizure protection for Vermonters.[118] This result would have been in line with Vermont's consistent interpretation of article 11 as granting greater protections than the Fourth Amendment.[119]

VI. CONCLUSION

In a 3–2 decision,[120] the Supreme Court of Vermont ruled that a police officer had violated Justin Ford's article 11[121] search and seizure rights by peering into his lit basement window without a sufficiently "reasonable belief that her entry into the home was immediately necessary to protect life and limb."[122] The court concluded that the officer's search of the curtilage failed to meet the requirements of the first and third prongs of Vermont's

---

judicial federalism, TARR & PORTER, *supra* note 96, at 13. Although, Latzer notes in contrast that "two-thirds of all of the state constitutional law cases dealing with criminal procedure follow federal precedent." Barry Latzer, *Four Half-Truths About State Constitutional Law*, 65 TEMP. L. REV. 1123, 1141 (1992) [hereinafter Latzer, *Four Half-Truths*].

117. After freeing itself from impending Supreme Court review, it is perplexing why the Supreme Court of Vermont would choose not to address the vitality of the second prong of the *Mountford*/*Mitchell* analysis following *Brigham City*. There are several potential explanations, among them a lack of necessity and potential reluctance or unpreparedness. *See supra* notes 102–103. For a discussion comparing the implications of vertical versus horizontal federalism on a state supreme court's independence, see Latzer, *Four Half-Truths*, *supra* note 116, at 1133–42.

118. Perhaps the Supreme Court of Vermont chose to postpone addressing the subjective inquiry debate until pressures surrounding *Brigham City* subsided. Latzer believes that "[s]tate judges should be free to consider any relevant authority when developing state law without having to prove their independence by rejecting Supreme Court precedent." Latzer, *Four Half-Truths, supra* note 116, at 1142.

119. *See* State v. Cunningham, 954 A.2d 1290, 1295 (Vt. 2008) (explaining that the Supreme Court of Vermont has "consistently held that Article 11 provides greater protections than its federal analog, the Fourth Amendment . . . ."); State v. Morris, 680 A.2d 90, 98, 100 (Vt. 1996) (following New Jersey and Washington's lead and rejecting the U.S. Supreme Court decision in California v. Greenwood, 486 U.S. 35 (1988)). For another glimpse into Vermont's strong sense of independent state constitutional jurisprudence, *see Morris*, 680 A.2d at 106 (Dooley, J., dissenting) (explaining that he "strongly agree[d] with the creation of an independent state constitutional jurisprudence that keeps essential decisions about protected liberties as much as possible within Vermont."). Professor Robert F. Williams provides an interesting discussion of independent state constitutional jurisprudence, analyzed through a case study on state supreme court reactions to *Greenwood*. ROBERT F. WILLIAMS, THE LAW OF AMERICAN STATE CONSTITUTIONS 163–69 (2009).

120. *Ford*, 998 A.2d at 686.

121. VT CONST. ch. I, art. 11.

122. *Ford*, 998 A.2d at 692.

Mountford/*Mitchell* emergency aid exception analysis.[123] Ford's conviction was reversed and the case was remanded.[124] The *Ford* decision narrowed Vermont's emergency aid exception and left the exact contours of the *Mountford*/*Mitchell* emergency aid analysis in question. *Ford* requires that an officer's analysis of a potential emergency not only be objectively reasonable in the moment, but also that it be accurate in hindsight.[125] This heightened burden for the state may likely prove to abridge the purposes of the emergency aid exception by causing police to second-guess their gut reactions to emergency situations.[126] The opinion also fails to address whether the second, subjective inquiry of the emergency aid analysis endures in Vermont[127] despite the United States Supreme Court's decision in *Brigham City v. Stuart*.[128] Whatever the reason, the Supreme Court of Vermont may have missed an ideal opportunity to clarify the status of the emergency aid exception in their state. As a result, the Vermont emergency aid exception remains in a narrowed yet intermediate and undetermined state, awaiting clarification in the future.

123. *Id.* at 690.
124. *Id.* at 692.
125. *See supra* notes 106–107.
126. *See supra* notes 57, 107.
127. *See supra* notes 102–103.
128. 547 U.S. 398 (2006).